as an assignment, it can derive no assistance from the doctrine of declarations of trust." [3]

Several of the earlier English cases, notably *Morgan* v. *Malleson*,[4] and *Richardson* v. *Richardson*,[5] held that words implying an intention to bestow a present gift constitute an enforceable donation. These decisions were based on the ground that such words are equivalent to a formal declaration of trust. A subsequent Pennsylvania case [6] declared, *obiter*, that this doctrine was "founded in reason and good sense" but it seems that the vast preponderance of modern authority considers it unsound.[7]

In a very recent Virginia case the doctrine as laid down by Professor Graves in 1 VA. LAW REG. 879, 880 was followed and approved.[8] In this case certain sons, being indebted to their father, proffered payment of the amount of their indebtedness. Payment was refused, the father stating that he desired the money paid to the two married sisters of the debtors. The sons consented, and agreed to make payment to the designated parties. Before such payment was made, however, the father died, and the effort of the sisters to secure the amount of the debt failed, the court holding that no valid transfer to the original debtors as trustees had occurred, and refusing to sustain the transaction as a declaration of trust by the father. This ruling is in accordance with the entire weight of authority in Virginia and is so firmly established that no other ruling could be justified unless based on statute.

W. R. A.

ALIMONY—AWARDING SPECIFIC PORTION OF HUSBAND'S ESTATE.—In the absence of express statutory authority, the court ordinarily possesses no power to vest in a wife title to a specific portion of the husband's real estate as alimony. *Lovegrove* v. *Lovegrove* (Va.), 104 S. E. 804.

ADVANCEMENTS—HOTCHPOT.—Under the older line of common law decisions the doctrine of advancements was confined to cases of intestacy and was perhaps never applicable to a case in which there was a will of any of the property.[1] The doctrine was based upon the presumed desire of the donor to equalize the distribution of his estate amongst his children and it was thought that the very foundation of the rule prevented the doctrine from applying unless the ancestor died wholly intestate.[2]

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[3] Prof. Graves, in 1 VA. LAW REG. 879, 880; Ross *v.* Milne, 12 Leigh 204, 222, 37 Am. Dec. 646; Poff *v.* Poff (Va.), 104 S. E. 719.
[4] L. R. 10 Eq. 475. [5] L. R. 3 Eq. 686.
[6] Helfenstein's Estate, 77 Pa. St. 326.
[7] Young *v.* Young, 80 N. Y. 422, and cases there cited.
[8] Poff *v.* Poff, *supra*.
[1] Arthur *v.* Arthur, 10 Barb. (N. Y.) 24. See Hawley *v.* James, 5 Paige (N. Y.) 318; Payne *v.* Payne (Va.), 104 S. E. 712.
[2] Grattan *v.* Grattan, 18 Ill. 167, 65 Am. Dec. 726. See Jaques *v.* Swasey, 153 Mass. 596, 12 L. R. A. 566 and note.

Under the Code of 1887, § 2561, which was reenacted in the Code of 1919 as § 5278, the common law rule as to advancements was liberally extended to include instances where the ancestor dies *intestate as to any part* of his estate and also where he makes a *gift by his own will,* if the other requisite elements exist to make it an advancement. The purpose of such enactment is in keeping with the original purpose of the doctrine and elevates the principle of equalization amongst descendants to a broader and more effective plane.

The very recent cases of *Payne* v. *Payne, supra,* and *Poff* v. *Poff,*[3] have carefully interpreted the above mentioned statute and effectively summarized the State law upon the subject, reviewing the former decisions and clearing up several points upon which apparent conflict had cast doubt. In the case of *Payne* v. *Payne, supra,* Prentis, J., clearly and tersely summarized the definition of an advancement as evolved from a long line of decided cases. An advancement is "a gift from an ancestor to a descendant for the purpose of advancing him in life in anticipation of the final division of the donor's estate between his descendants after his death. The intention of the testator determines the question as to whether or not the gift is an advancement."

In the same opinion the question as to whether or not a gift by an ancestor should be *prima facie* presumed as intended as an advancement was carefully considered. In 1 MINOR, REAL PROPERTY, § 952, the author contends that such a presumption should exist, rebutted only by the proof of a contrary intent. Doubt, however, as to the real situation in Virginia was thrown upon Professor Minor's contention by the case of *Watkins* v. *Young,*[4] in which it was *doubted* if there was any such *prima facie* presumption that a gift is intended as an advancement. Although not essential to a decision in the case, the court in considering the question said:

> "The author states that the trustworthiness of this conclusion is impaired by the case of *Watkins* v. *Young,* 31 Gratt. (72 Va.) 84, where it is doubted that there is a *prima facie* presumption that the gift is intended as an advancement; but this doubt seems to be resolved in favor of Mr. Minor's view in the later cases of *McDearman* v. *Hednett,* 83 Va. 281, 2 S. E. 643; *Hill* v. *Stark,* 122 Va. 288, 94 S. E. 792; and *Johnson* v. *Mundy,* 123 Va. 738, 97 S. E. 564."

The point was squarely presented in the case of *Poff* v. *Poff, supra,* which reiterates the principles as laid down in the earlier case of *Payne* v. *Payne, supra,* and leaves the points involved in the interpretation of § 5287 clear, well defined and free from doubt.

I. G. C.

[3] (Va.) 104 S. E. 719.
[4] 31 Gratt. 84.